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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,126	10/31/2003	Richard Mazurek	CPG 03-44 KF	8461

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EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/697,126	Applicant(s) MAZUREK, RICHARD	
	Examiner Gary E. Elkins	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20040116</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stiffening sheet with both ends and sides as set forth in claims 2, 9, 13 and 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. Claims 1-11 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following are each a double inclusion of an element insofar as the element is being reintroduced into the claims: in line 2 of each of claims 1 and 8, "at least one tray".

In claim 1, lines 2-5, claim 8, line 3 and claim 11, lines 1, 2 and 6, "the tray" (8 occurrences) is unclear since a plurality of trays were previously defined in the claims, i.e. which of the plurality is being referred to?

In claim 1, line 12, "portion" is unclear within the context of the claim. It would appear that ---position--- is the intended meaning.

In claim 2, "hinged to the main panel" is unclear insofar as the stiffening sheet has a central panel. The main panel is formed in the tray forming sheet.

In claims 6 and 7, "the side and end panels of the base and cover" and "the main, side and end panels of the base of cover", respectively, are indefinite insofar as only one box and cover has previously been defined as including main, side and end panels. The other of the base and cover is only defined as a double-walled tray. Thus the phrases lack antecedent basis with respect to the base or cover which has not been previously defined with such panels.

In claim 17, "the....cover" lacks antecedent basis in the claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12, 13 and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Langston, Jr. et al (fig. 11 emb). Langston, Jr. et al discloses a double walled tray including a stiffening sheet 414 with sides and ends 416 which is secured between folded over portions (38, 46, 70, 72 portions of the side walls and ends walls of a tray forming sheet. With respect to method claims 18-21, the formation steps are considered the inherent and necessary steps involved in forming the tray disclosed in Langston, Jr. et al.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langston, Jr et al (fig. 11 emb). Langston, Jr. et al discloses all structure of the claimed tray except formation of the tray with a square shape. It would have been obvious to size and proportion the tray of Langston, Jr. et al such that the box is square as a change in the size and shape of the box. Sizing and proportioning boxes to hold a known size and shape of content is within the level of skill in this art and the selection of a square shape for the box in Langston, Jr. et al would have been prima facie obvious to one of ordinary skill in this art. See In re Rose, 105 USPQ 237 (CCPA 1955), Gardiner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ

232 (1984), In re Dailey, 149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459.

7. Claims 1-3 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langston, Jr et al (fig. 11 emb) in view of any one of Laido, Wolf or Bauer et al. Langston, Jr. et al discloses all structure of the claimed box and all steps of the claimed method except formation of both a base box and cover as double walled trays. Each of Laido, Wolf and Bauer et al teaches that it is known to make a double walled base box with a separate similarly formed double walled telescoping cover. It would have been obvious to substitute a separate cover for the integral cover of Langston, Jr. et al as taught by any one of Laido, Wolf or Bauer et al since a separate double walled telescoping cover provides a stronger overall box and simpler formation of each tray piece. Separate telescoping covers on trays are well known in this art. With respect to claim 6, It would further have been obvious to size and proportion the tray of Langston, Jr. et al such that the box is square as a change in the size and shape of the box. Sizing and proportioning boxes to hold a known size and shape of content is within the level of skill in this art and the selection of a square shape for the box in Langston, Jr. et al would have been prima facie obvious to one of ordinary skill in this art. See In re Rose, 105 USPQ 237 (CCPA 1955), Gardiner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984), In re Dailey, 149 USPQ 47 (CCPA 1976), Graham v. John Deere Co., 148 USPQ 459.

Allowable Subject Matter

8. Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 4 and 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

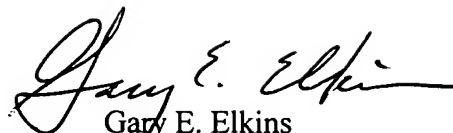
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

Art Unit: 3727

A handwritten signature in cursive script, reading "Gary E. Elkins".

Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
02 October 2005